

REMARKS/ARGUMENTS

Claim Rejections - 35 USC §103

Claims 3, 4, 6, 7, 12 – 15, 18, and 19 are rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Application Publication No. 2006/0014507 to Giancola et al. (hereinafter "Giancola") in view of U.S. Patent No. 6,721,547 to Husted et al. (hereinafter "Husted").

Claims 8 and 16 are rejected as being unpatentable over Giancola and Husted in view of U.S. Patent No. 6,314,278 to Zamat.

Applicants respectfully submit that these rejections are traversed for the reasons set forth below.

In reviewing the detailed discussion of these rejections, Applicants note that the Examiner admits that one feature of independent claims 3 and 12 is neither disclosed nor suggested in the cited prior art. In the last sentence on page 4 of the Official Action, the Examiner states, "Giancola does not specifically teach the use of an erase circuit," as recited in independent claims 3 and 12. Additionally, in the second sentence on page 5 of the Official Action, the Examiner states that, "Husted does not specifically teach of erasing the group of samples if the number of samples within the group which exceed the saturation criteria is greater than the threshold number," as recited in independent claims 3 and 12.

To overcome this deficiency in Giancola and Husted, the Examiner appears to be asserting *official notice* in the second paragraph of page 5 of the Official Notice. (“It would have been obvious to one having ordinary skill in the art at the time that the invention was made to have compared the number with a threshold ... so as to decide whether the data segment can be recovered ... or erased due to severe saturation...”) Applicants respectfully submit that this is an inappropriate use of official notice.

As set forth in MPEP §2144.03(A), “Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances.” These circumstances include those in which the fact so noticed is “capable of instant and unquestionable demonstration as being well-known.” Applicants respectfully submit that in the use of official notice in the present Official Action does not meet this burden, i.e. the feature of:

determining, from said first plurality of samples, a first number of said first samples which exceed a saturation criteria;
comparing the first number to a threshold number and erasing the first plurality of samples if the first number is greater than the threshold number; (Emphasis added)

is not “capable of instant and unquestionable demonstration as being well-known.”

Additionally, as set forth in MPEP §2144.03(B), “The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” However, in the current

Official Action, no reasoning is provided beyond a conclusory statement that the feature “would have been obvious.”

Thus, Applicants respectfully submit that no prima facie case of obviousness has been established for independent claims 3 and 12.

Therefore, for the reasons set forth above, Applicants respectfully submit that independent claims 3 and 13 are not subject to rejection 35 USC §103(a) as being unpatentable over Giancola in view of Husted. As claims 4, 6, and 7 are dependent upon claim 3 and claims 13 – 15, 18, and 19 are dependent upon claim 12, and Applicants believe these claims are allowable over the cited references of record for the same reasons provided above.

Based on the arguments presented above, withdrawal of the obviousness rejections of claims 3, 4, 6, 7, 12 – 15, 18, and 19 is respectfully requested.

Conclusion

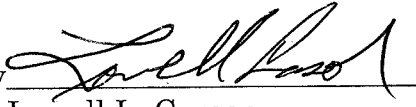
If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephonic interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

Applicant: Haim et al.
Application No.: 10/779,951

In view of the foregoing remarks, Applicants respectfully submit that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Haim et al.

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